IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6568 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASANT HARILAL SONI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6568 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1-2

MR VM PANCHOLI, AGP for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/02/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has challenged his detention order dated 7.2.2002. By the impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(1) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "bootlegger" and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, there is a reference of five criminal cases, which are filed against him under the provisions of the Bombay Prohibition Act.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that, the last case registered against the petitioner is on 18.9.2001, while the detention order is passed as late as on 7.2.2002. For that purpose, learned advocate has relied upon the decision of this Court in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and others, reported in 1997 (1) GLH 381 wherein the Court in para 21 observed as under.:

> "In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Praksh v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth

v. S.Ramamurthy reported in 1993 (2) Suppli, SCC 61."

#. Mr.Pancholi, learned AGP, however, tried to explain the delay. In the reply, it is stated that the last offence was registered on 18.9.2001. The statements of witnesses were recorded at later point of time, i.e. on 3.12.2001 and 8.12.2001 and the statement of witness No.3 was recorded on 5.12.2001, which were subsequently verified by the authority on 5.1.2002 and the District Magistrate verified the same on 7.2.2002.

#. Once these registered cases were already on record, it was not necessary even to wait for recording the statements of the witnesses, as, even on the basis of such cases, the petitioner could have been detained under the provisions of the PASA. In that view of the matter and in view of the judgment referred to above, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 7.2.2002 is quashed and set aside. The detenu Vasant Harilal Soni is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)